**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1067 OF 1983**

**Baburao Sukdeo Patil @ Kakade since deceased, by his heir and legatee Shri Bhaskar Baburao Kakade @ Patil ... Petitioner**

**versus**

**1) Pratap Ganpat Pawar, since deceased, by his heirs and legal representatives :**

- **A) Bapu Pratap Pawar,**
- **B) Smt.Bhagirathibai Pratap Pawar,**
- **C) Mohansingh Pratap Pawar,**
- **D) Miss Mangal Pratap Pawar,**
- **E) Miss Bharati Pratap Pawar,**
- **F) Mrs. Vimal Govinda Dhoke,**
- **G) Mrs. Asha Dilip Rajput,**

**2) Smt. Nathyabai w/o Yadavrao Pawar, since deceased, by her heir and legal representative**

- **A) Sou. Rukhmabai Dhansing Rajput,**

3) Smt. Chandrabhagabai w/o
Yadavrao Pawar,
4) The Maharashtra Revenue
Tribunal at Bombay. ... Respondents

...

Mr. M.V. Sali, for the Petitioner.
Mr. K.S. Bhadti with Mr. N.S. Shastri, for Respondents Nos. 1(A) to 1(G).
Mr. P.N. Karlekar, for Respondents Nos.2 and 3.
Respondent No.4 - formal party.

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CORAM : A.M.KHANWILKAR,J.

7th June 2004

ORAL JUDGMENT :

1. This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Bombay, dated July 5, 1982, in Revision Application No. Ten.A.366 of 1981. A piquant situation has arisen in this matter. The land bearing Survey No. 50, Gut No. 80, admeasuring 5 H. 01 R. at village Morane

Sandus, taluka Bagalan, District Nasik, belonged to the three Respondents herein. Out of them, Respondents Nos. 2(A) and 3 have entered into a compromise with the Petitioner. It is not in dispute that the said land originally belonged to Respondents Nos. 1, 2 and 3 and they were joint owners thereof. The Petitioner was inducted as tenant in the said land in the year 1967-68 by an agreement for a period of 11 years. It is the case of the Petitioner that on expiry of the said 11 years' period, the Petitioner wanted to surrender the suit land to the Respondents, but it is the Respondents, who insisted that the Petitioner should continue to occupy the same and carry on agricultural activities thereon. On the other hand, it is the case of the Respondent No. 1, who is the sole contesting Respondent in this case, that on expiry of the said 11 years' period as per the original agreement, the Petitioner did not hand over possession of the suit land, for which reason legal notice was issued. Even thereafter, the Petitioner continued to occupy the suit land. The Petitioner thereafter preferred an application under section 32O of the Bombay Tenancy and Agricultural Lands Act before

the Tahsildar, Bagalan. The Tahsildar by judgment and order dated August 1980 allowed the application preferred by the Petitioner rejecting the contention of Respondent No. 1 that the application was barred, as it was not filed within the statutory period from the date of first agreement inducting the Petitioner as tenant in the suit land in the year 1967-68. The Tahsildar, on the other hand, found that after expiry of the lease period in terms of the agreement of 1967-68, the landlords approached the Petitioner and requested him to cultivate the land on the condition that he should pay Rs..3,001/- per annum and the landlords did not intend to take back possession of the suit land. On this finding, the Tahsildar proceeded to hold that fresh tenancy was created in favour of the Petitioner after expiry of the first agreement in the year 1978 and the present application having filed in the year 1979 was within time and ought to be granted in favour of the Petitioner. Against this decision, Respondent No. 1 carried the matter in appeal before the Sub-Divisional Officer. The first appellate authority upheld the finding and conclusion reached by the

Tahsildar. Naturally, the Respondent No. 1 carried the matter in revision before the Maharashtra Revenue Tribunal. The Tribunal was pleased to reverse the finding and the conclusion reached by the authorities below on the reasoning that there was no reliable evidence to support the finding that fresh tenancy was created in favour of the Petitioner in the year 1978 in respect of the suit land. Having recorded that finding, the Tribunal proceeded to hold that the application as filed in the year 1979 was obviously beyond time. Accordingly, the revision preferred by Respondent No. 1 came to be allowed by setting aside the concurrent view taken by the two authorities below.

2. Mr. Sali, for the Petitioner, submits that having regard to the developments taken place during the pendency of this writ petition, the appropriate course is to set aside the impugned order and restore the conclusion reached by the authorities below. According to him, if such a course is not adopted, it will result in inconsistent orders being passed in respect of the same land jointly owned by the Respondents.

It is next contended that, at any rate, the Tribunal's decision cannot be sustained because the Tribunal has interfered with the finding of fact recorded by the two authorities below, which is impermissible in view of the limited scope of interference provided for under section 76 of the Bombay Tenancy and Agricultural Lands Act. He further submits that the finding reached by the two authorities below is supported by the evidence on record and it is not possible to even remotely suggest that the same is manifestly wrong or error apparent on the face of record. According to him, therefore, the decision of the Tribunal deserves to be set aside.

3. On the other hand, Counsel for Respondent No. 1 submits that no infirmity can be attached to the approach or the view taken by the Tribunal. He submits that the Tribunal has rightly held that there is no reliable evidence to support the finding of surrender of the first tenancy on expiry of 11 years' period and thereafter creation of fresh tenancy in favour of the Petitioner. He further submits that merely because Respondents Nos. 2(A) and 3 have entered

into settlement with the Petitioner, for reasons best known to them, that cannot be the basis for setting aside the well-reasoned decision of the Tribunal, which is sound both on facts and in law. In his submission, therefore, this petition deserves to be dismissed.

4. Counsel for Respondents Nos. 2(A) and 3 is supporting the submission advanced on behalf of the Petitioner.

5. Having considered the rival submissions, I find substance in the argument advanced on behalf of Respondent No. 1 that merely because the Petitioner and Respondents Nos. 2(A) and 3 have entered into settlement during the pendency of this petition, will be of no avail and that by itself cannot be the basis for setting aside the well-reasoned decision of the Tribunal. It is made clear that even though this Court (my predecessor) vide order dated 2nd April 2004 has taken on record the consent terms entered into between the parties, the Petitioner on the one hand and Respondents Nos. 2(A) and 3 on the other, that may not be construed as approval of

or validating the same, but that is obviously subject to the legal mandate and would be binding between the parties if law so permits.

6. Insofar as the view taken by the Tribunal is concerned, to my mind, there is no infirmity in the conclusion reached that there is no reliable evidence to support the finding regarding the factum of surrender after the expiry of 11 years' period from the first agreement, or, for that matter, of creation of new tenancy in favour of the Petitioner in respect of the suit land on or after 1978. Indeed, the first authority has held that new tenancy was created in favour of the Petitioner on and from 1978, but in reaching this conclusion, it has not adverted to any specific evidence on record, but proceeded on surmise that since the Petitioner continued to occupy the suit land even after the expiry of 11 years' lease period, that means fresh tenancy was created in his favour. The first authority has also recorded that after the lease period was over, the landlords approached the Petitioner and requested him to cultivate the suit land on

condition that he should continue to pay Rs.3,001/- per annum and that they did not want back the possession thereof. To support this view taken by the first authority, my attention was drawn to the evidence of Pratap Ganpat Pawar by Mr. Sali for the Petitioner. Even on fair reading of the said evidence, to my mind, there is not even a remote suggestion that the Petitioner had, in fact, surrendered the suit land after expiry of the lease period and thereafter the parties agreed to create fresh tenancy in favour of the Petitioner in respect of the suit land. In absence of such evidence, I am at a loss to sustain the finding of the first authority, which has been mechanically confirmed by the appellate authority that fresh tenancy was created in favour of the Petitioner. At the cost of repetition, it is noted that no other evidence is relied upon by the Petitioner nor brought to my notice in support of the abovesaid factualposition. To my mind, therefore, no fault can be found with the view taken by the Tribunal that there is no reliable evidence to support the finding of creation of fresh tenancy in favour of the Petitioner in respect of the suit land on and

from 1978. So understood, it will necessarily follow that the application as filed by the Petitioner under section 32O of the Bombay Tenancy and Agricultural Lands Act in the year 1979 is barred by the statutory period provided therefor. It is common ground that that tenancy was created in favour of the Petitioner in the year 1967-68. If it is so, the period to file application under section 32O of the Act would commence from the date of the agreement itself. Only to get over this position, the argument was advanced on behalf of the Petitioner and supported by Respondents Nos. 2(A)and 3 herein that fresh tenancy was created in favour of the Petitioner on and from 1978. As that contention fails, as has been rightly found by the Tribunal, the conclusion reached by the Tribunal does not require any interference.

7. Accordingly, this writ petition fails and the decision of the Tribunal under challenge is sustained. Rule discharged. In the facts and circumstances of the case, no order as to costs.

8. All concerned to act on the copy of this

order duly authenticated by the Court Stenographer of this Court.

**(A.M.KHANWILKAR,J.)**